

This occupancy and management agreement made and entered into as of the first day of August 1966 by and between BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized pursuant to the provisions of the Housing Authority Law, chapter 121 of the Massachusetts General Laws (Ter. Ed.), as amended (hereinafter sometimes referred to as "BRA" or "Landlord") and RAYMOND'S, INC., a corporation organized and existing under the laws of The Commonwealth of Massachusetts and having a usual place of business within the City of Boston, Suffolk County, said Commonwealth (hereinafter sometimes referred to as "Raymond's" or "Tenant")

W I T N E S S E T H T H A T

WHEREAS, as part of an early land program in the Central Business District Urban Renewal Project Area, BRA has, pursuant to section 26P of said chapter 121, acquired certain property, more fully described in the Schedule I annexed hereto and made part hereof and formerly known as the CityMart Building (hereinafter referred to as the "Building") and has also acquired other property including the premises wherein Raymond's has been doing business;

WHEREAS certain joint venturers doing business as Raymond's Redevelopment Associates (hereinafter sometimes referred to as the "Redevelopers") have presented

to BRA a proposal whereby as a part of or in connection with the said early land program they would acquire from BRA a parcel of land including substantially the site where Raymond's has been doing business and would develop on the said parcel certain facilities (hereinafter sometimes referred to as the "Redevelopment") some of which will be appropriate for a permanent place of business for Raymond's and Raymond's has agreed to become a principal tenant of the Redevelopment;

WHEREAS the Building is a valuable relocation resource which is suitable for use as a department store and in particular for temporary relocation of Raymond's business pending completion of the Redevelopment;

WHEREAS Raymond's has accrued extensive experience in the operation and maintenance of properties similar to the Building, and BRA desires to avail itself of the benefits and advantages of Raymond's said experience for purposes of management of the Building; and

WHEREAS BRA also desires to ensure the orderly relocation of Raymond's and its licensees and certain other businesses, including on-site moves of certain businesses for the convenience of BRA, all with a minimum amount of resulting hardship;

NOW, THEREFORE, in consideration of the rents, agreements and conditions herein reserved and contained on the part of Raymond's to be paid, performed and observed and the mutual promises herein contained, it is agreed as follows:

1. During the term hereinafter stipulated Raymond's shall have the right to use and occupy for department store purposes, including the offering of merchandise for sale to customers and appurtenant warehousing and administrative offices and other related uses, all of basement through the fifth floors of the Building, subject, however, to paragraphs 10 and 11 hereof.

2. The original term of Raymond's use and occupancy of the Building shall be a period commencing upon August 15, 1966 and terminating July 31, 1969 unless previously extended or terminated as hereinafter provided.

a. In the event that the Redevelopment is ready for occupancy by Raymond's prior to July 31, 1969, Raymond's may terminate its use and occupancy of the Building upon the sixtieth day after Raymond's giving BRA written notice specifying the date of Raymond's vacating the Building.

b. In the event that as of July 31, 1969
(i) the Developers shall have entered into a timely land disposition agreement with BRA with respect to the Redevelopment and shall have used every reasonable effort to complete the Redevelopment in accordance with that agreement and
(ii) Raymond's is ready, willing and able to move its business into the Redevelopment as soon as it is complete but (iii) the Redevelopment has been delayed by some cause beyond the control of either the Developers or Raymond's, then the

term of Raymond's use and occupancy of the Building shall be extended until the sixtieth day after Raymond's giving BRA written notice specifying the date of Raymond's vacating the Building.

c. In the event that the Redevelopers either (i) fail to enter into a timely land disposition agreement with BRA with respect to the Redevelopment or (ii) repudiate or commit a material breach of such an agreement and (iii) the Redevelopers assign to Raymond's all their right, title and interest in and to the Redevelopment and any agreements, plans, specifications or other such materials pertaining thereto (consent to which assignment BRA agrees not unreasonably to withhold), then the term of Raymond's use and occupancy of the Building shall be extended so long as Raymond's faithfully and diligently prosecutes the Redevelopment and until the ninetieth day after substantial completion thereof.

d. In the event that Raymond's (i) fails on or before January 15, 1967 to execute or to agree to execute a long-term lease of space in the Redevelopment for its business upon reasonable terms substantially in accordance with the undated Memorandum of Agreement between the Redevelopers and Raymond's submitted to BRA on June 1, 1966 or (ii) repudiates or commits a material breach of such a

lease or agreement or (iii) refuses to accept an assignment of the kind referred to in clause (iii) of the preceding subparagraph c or (iv) after such an assignment fails to enter into a timely land disposition agreement with BRA with respect to the Redevelopment or repudiates or commits a material breach of such an agreement, BRA may terminate Raymond's use and occupancy of the Building as of any date specified in a notice delivered to Raymond's not less than sixty days prior to the date so specified.

e. The expression "the term of use and occupancy" shall mean the original term of Raymond's use and occupancy of the Building as aforesaid together with any and all extensions thereof. Except as expressly otherwise provided, all the agreements and conditions herein contained shall apply at all times during which Raymond's shall have the right to use and occupancy of the Building pursuant to this instrument and also at all times when Raymond's is actually using or occupying the Building or any part thereof.

4. On or before August 15, 1966, BRA will deliver to Raymond's possession of substantially all of the Building free and clear of all tenancies and occupancies

except those specified in the Schedule II attached hereto and made part hereof. BRA further agrees that during the term of use and occupancy, so long as Raymond's pays the use and occupancy charge hereinafter stipulated and performs and observes the agreements and conditions on its part to be performed and observed, Raymond's shall and may peaceably and quietly have, hold and enjoy the Building for the purposes stated in paragraph 1 hereof without any manner of hindrance or molestation and, except as otherwise provided in paragraphs 10 and 11 hereof, shall have the exclusive possession of the Building and, without, limiting the generality of the foregoing, the right and duty to lock or otherwise secure and protect the Building. Unless requested to do so by BRA, Raymond's will not record this instrument or any part hereof.

5. After the execution of this agreement and prior to the delivery to Raymond's of possession of the Building Raymond's shall have the right, without charge, whenever Raymond's shall deem it appropriate, to enter the Building and make such improvements thereto as it shall have the right to make and install therein fixtures, supplies, merchandise and other property. However, any such entry and

the making of any such improvements and any such installation shall be done without hampering or interfering with possession, use and occupancy of the Building (including, without limiting the generality of the foregoing, termination of occupancy and removal of personal property) by BRA and/or any other occupant or person in possession of the Building or any part thereof.

a. While Raymond's may thus be making improvements to the Building or installing in the Building fixtures, supplies, merchandise and other property pursuant to the right granted in this paragraph 5, Raymond's shall be in the Building at its own risk.

b. Until BRA shall have delivered to Raymond's possession of the Building as stipulated in the foregoing paragraph 4, BRA shall be responsible for the expense of any electricity, water and other utilities actually used in the Building. BRA shall not be obligated to furnish electricity, water and other utilities for Raymond's, but to the extent they may be available Raymond's shall have the right without charge to use the same.

6. Throughout the term of use and occupancy and until the date (if later) when Raymond's actually vacates the Building, Raymond's shall pay to BRA use and occupancy charges calculated as provided in this paragraph 6.

a. A "rent year" shall mean any twelve (12) month period commencing upon the rent day as hereinafter defined.

(i) The first rent year shall commence upon the day the Building is formally opened under Raymond's name for the sale of merchandise to customers (which day is hereinafter called the "rent day").

(ii) If the term of use and occupancy shall terminate on a day other than the day before a rent day, the last rent year shall end upon said termination day and commence upon that rent day which shall be more than six months but not more than eighteen months prior to said termination day. (If a rent year of more than twelve months shall occur upon the termination of the term, any amount paid during said rent year for the first twelve months of said lease year shall be deemed a payment on account.)

b. The "miscellaneous sales of the Building" for any rent year shall be the total amount of all sales of merchandise or services made in, upon or from the Building, during said rent year, whether the same shall be made by Tenant or by any subtenant or concessionaire of Tenant, whether delivered from the demised premises or elsewhere, except that sales on credit shall be included at the net amount received by Raymond's on account thereof and except that the following shall

not be included in miscellaneous sales of the Building for said rent year, or if previously included in miscellaneous sales of the Building for any rent year, the same shall be deducted from miscellaneous sales of the Building for said rent year, as the case may be:

(i) the amounts of all discounts, refunds, credits, allowances and adjustments made to customers;

(ii) the amounts of all sales taxes or other taxes in the nature of sales taxes, whether or not the same be called sales taxes, imposed by any governmental authorities, federal, state or local, irrespective of whether the same be imposed by present or future laws;

(iii) the amounts of all sales to employees of Tenant or of any subtenants or concessionaires of Tenant, which are made at discounts off prices charged to customers;

(iv) amounts received for merchandise transferred to any other place of business of Tenant or any subtenant or concessionaire of Tenant or any business organization affiliated with Tenant or any subtenant or concessionaire of Tenant, wherever located, and amounts received for merchandise returned to suppliers for credit;

(v) interest or other carrying charges on lease, credit or time sales;

(vi) amounts charged to customers for mailing, delivery, alterations or other services where the service is rendered to the customer without profit;

(vii) unpaid balances of credit sales which shall be charged off as "bad debts", provided that if at any time after such unpaid balance shall be so charged off, but prior to the expiration of the term of this lease, any amount shall be collected on account thereof, such amount shall be then included in miscellaneous sales of the Building;

(viii) amounts paid by customers and commissions received by Raymond's in connection with the following customer conveniences - sale of postage stamps, public telephones, weighing machines, parcel lockers, pay toilets, payments of public utility bills, cashing of checks, and issuance of money orders and register checks;

(ix) amounts received from sales of distressed, damaged or obsolescent merchandise sold in bulk to persons other than retail customers and amounts received from sales of used trade fixtures and store operating equipment;

(x) amounts received from vending machine sales or cafeteria or luncheonette sales where such vending machines, cafeterias or luncheonettes are for the convenience of employees and not open to customers; and

(v) interest or other carrying charges on lease, credit or time sales;

(vi) amounts charged to customers for mailing, delivery, alterations or other services where the service is rendered to the customer without profit;

(vii) unpaid balances of credit sales which shall be charged off as "bad debts", provided that if at any time after such unpaid balance shall be so charged off, but prior to the expiration of the term of this lease, any amount shall be collected on account thereof, such amount shall be then included in miscellaneous sales of the Building;

(viii) amounts paid by customers and commissions received by Raymond's in connection with the following customer conveniences - sale of postage stamps, public telephones, weighing machines, parcel lockers, pay toilets, payments of public utility bills, cashing of checks, and issuance of money orders and register checks;

(ix) amounts received from sales of distressed, damaged or obsolescent merchandise sold in bulk to persons other than retail customers and amounts received from sales of used trade fixtures and store operating equipment;

(x) amounts received from vending machine sales or cafeteria or luncheonette sales where such vending machines, cafeterias or luncheonettes are for the convenience of employees and not open to customers; and

(xi) amounts received on account of sales of swimming pools by a concessionaire who does not use or occupy any space in the Building, even if such sales result in whole or part from inquiries received by Raymond's at the Building and forwarded to said concessionaire.

In the case of sales from vending machines maintained in the Building for purchases by customers and in the case of storm windows sold outside the Building by a concessionaire who is afforded desk, space and telephone facilities within the Building, only the gross commissions received by Raymond's, rather than the total amounts of such sales, shall be included in the miscellaneous sales of the Building.

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c. The annual use and occupancy charge to be paid by Raymond's to BRA for each rent year during the term of use and occupancy shall be equal to the sum of

(i) if the gross miscellaneous sales of the Building for said rent year do not exceed eight million dollars (\$8,000,000), one per cent (1%) of said sales; or

(ii) if the gross miscellaneous sales of the Building for said rent year exceed eight million dollars (\$8,000,000) but do not exceed twelve million dollars (\$12,000,000), one and one-half per cent (1.5%) of said sales; or

(iii) if the gross miscellaneous sales of the Building for said rent year exceed twelve million dollars (\$12,000,000), one hundred eighty thousand dollars (\$180,000) plus three per cent (3%) of said sales in excess of twelve million dollars (\$12,000,000).

If any rent year shall be longer or shorter than twelve months, for purposes of calculating the use and occupancy charge for said rent year the aforesaid amounts of eight million dollars (\$8,000,000), twelve million dollars (\$12,000,000) and one hundred eighty thousand dollars (\$180,000) shall be increased or decreased (as the case may be) in the same proportion that said rent year shall be longer than or shorter than twelve months.

d. On or before September 20, 1966 and on or before the 20th day of each and every succeeding month through and including the 20th day of the month next following the month during which the term of use and occupancy ends or Raymond's actually vacates the Building (whichever is later), Raymond's shall submit to BRA a statement signed by an authorized officer of Raymond's showing the gross miscellaneous sales of the Building for the preceding calendar month (which sales according to the said statement are hereinafter called the "Stated Monthly Sales"). At the same time Raymond's shall pay to BRA on account of the annual use and occupancy charge for the then current rent year one per cent (1%) of the Stated Monthly Sales plus, if either the Stated Monthly Sales exceed six hundred seventy thousand dollars (\$670,000) or the total of the Stated Monthly Sales and the gross miscellaneous sales similarly stated for all previous months of the then current rent year (which total is hereinafter called the "Stated Aggregate Sales") exceeds eight million dollars (\$8,000,000),

- (i) an additional one-half of one per cent (0.5%) of the Stated Monthly Sales; and
- (ii) if Stated Aggregate Sales exceeds twelve million dollars (\$12,000,000), an additional one and one-half per cent (1.5%) of the amount of such excess or of Stated Monthly Sales, whichever is less.

e. On or before the fiftieth day after the end of each rent year Raymond's shall submit to BRA a statement signed by an authorized officer of Raymond's showing the gross miscellaneous sales of the Building for the said rent year. At the same time, Raymond's shall pay to BRA the excess, if any, of the annual use and occupancy charge due pursuant to the foregoing subparagraph c over the amounts paid on account thereof pursuant to the foregoing subparagraph d, or BRA shall refund to Raymond's the excess, if any, of amounts paid pursuant to said subparagraph d over the annual use and occupancy charge due pursuant to said subparagraph c.

f. In the event that Raymond's uses or occupies the Building (other than pursuant to paragraph 5 hereof) for a period in excess of thirty (30) days without bona fide offering of substantial quantities of merchandise for sale to customers, unless the absence of such offering is the result of some unforeseeable cause beyond Raymond's control and without its fault or negligence (including acts of God or of the public enemy or of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and force majeure), Raymond's shall pay

to BRA for such period, in lieu of the use and occupancy charge specified in the foregoing subparagraph c, a use and occupancy charge at the rate of twenty thousand dollars (\$20,000) per month.

g. Raymond's agrees that it will keep in its principal accounting office true and accurate records, in accordance with usual accounting practices, showing all sales made in, upon or from the Building during the term of use and occupancy and further agrees that all Raymond's records and accounts with respect to the Building shall be subject to inspection at any and all reasonable times by representatives of BRA, the City of Boston and the United States of America. All such records and accounts shall be kept and preserved and shall be at any and all reasonable times available for copying; examination and/or audit by such representatives. However, each statement submitted and payment made by Raymond's to BRA pursuant to the foregoing subparagraph d or e shall be deemed final and conclusive unless prior to the third anniversary of the termination of the term of use and occupancy BRA shall have notified Raymond's that said statement or payment (as the case may be) may be

subject to challenge. Raymond's shall not be obligated to continue keeping and preserving the sales records upon which any statement or payment thus deemed final and conclusive was based.

7. Raymond's will make all repairs and replacements of and alterations to the property necessary to maintain the same in as good repair and condition as the same are in at the commencement of the term of this lease, reasonable wear and tear and damage by the casualties and events described in paragraph 9 hereof excepted. Upon the expiration or other termination of the term of use and occupancy, Raymond's will remove its goods and effects and those of all persons claiming under it and will yield up the Building to BRA peaceably with so much of the same as Raymond's is obligated to maintain pursuant to this paragraph 7 in as good repair and condition as the same were in at the commencement of the term of use and occupancy, reasonable wear and tear, and damage by the casualties and events described in said paragraph 9 excepted.

a. Raymond's shall maintain as aforesaid the interior of the portion of the Building described in paragraph 1 hereof, including without limiting the generality of the foregoing, all floor tile and interior doors and glass,

but excluding all property which BRA is required to repair or maintain by this paragraph 7. In addition, notwithstanding anything herein to the contrary, Raymond's, not BRA, shall make all repairs and alterations which may be required in or to or as the result of repairs, alterations, other improvements or installations made (including, without limiting the generality of the foregoing, signs erected or otherwise installed) by Raymond's or any subtenant or concessionaire of Raymond's or the agents of any of them.

b. BRA shall put and maintain the elevators and escalators in the Building and make all repairs necessary so that the same will be in accordance with applicable law and in condition adequately to perform their functions in transporting of passengers and/or freight (as the case may be) except that Raymond's shall maintain at its expense standard service contracts covering all the said elevators and escalators.

c. BRA shall maintain the Building structurally sound and free from leaks and, subject to paragraph 9 hereof, BRA shall make all necessary repairs, replacements and alterations of the foundation, the roof, the exterior and interior walls (not including partitions), the fire

escapes, the marquee, if any, subfloors, floors, ceilings, window frames, door frames and any and all other structural parts of the Building.

d. Except for a major repair which shall be the responsibility of BRA, Raymond's shall maintain the heating, air-conditioning, electrical, sprinkler and plumbing systems and all utilities conduits, fixtures and equipment within the Building. For the purposes of this subparagraph 7.d, a "major repair" shall mean a repair the cost of which exceeds one thousand dollars (\$1,000). In the event that during any rent year the cumulative expenses incurred by Raymond's (not including any amount on account of labor of Raymond's employees) exceed one thousand dollars (\$1,000) for repairs pursuant to this subparagraph 7.d other than major repairs, BRA shall reimburse Raymond's for such excess; provided that BRA shall in no circumstance have any obligation with respect to replacement of air conditioning filters, light bulbs and the like.

e. BRA shall use every reasonable effort to perform such maintenance and make such repairs, replacements and alterations at such hours and in such manner so that the same shall not unnecessarily interfere with Raymond's conducting its business.

8. Raymond's agrees not to make any structural repairs, alterations, other improvements or installations to or in the Building or to erect or otherwise install any exterior sign thereon without on each occasion obtaining the prior written consent of BRA, which consent BRA agrees not unreasonably to delay or withhold. BRA agrees that Raymond's may at any time and from time to time make any nonstructural repairs, alterations, other improvements or installations to or in the Building.

a. Raymond's agrees that any repairs, alterations, other improvements or installations made by it, structural or nonstructural, shall be done in a good and workmanlike manner and in conformity with all laws, ordinances and regulations of all public authorities having jurisdiction, that materials of good quality shall be employed therein, and that the structure of the Building will not be endangered or impaired thereby. It is agreed and understood that unless BRA specifies to the contrary in its

consent BRA will accept the Building as altered pursuant to the provisions hereof without any obligation upon Raymond's to restore the same to its former condition.

b. All repairs, alterations, other improvements or installations made to or in the Building which are so attached to the realty that the same will be by law deemed to be a part of the realty shall be the property of BRA and remain upon and be surrendered with the Building as a part thereof upon the termination of the term of the use and occupancy. Notwithstanding the foregoing, all trade fixtures, lighting fixtures and signs, whether by law deemed to be a part of the realty or not, purchased by Raymond's from prior occupants or installed at any time or times by Raymond's or any person claiming under Raymond's shall remain the property of, and may be removed at any time or times during the term of the use and occupancy by, Raymond's or such person (as the case may be). Raymond's agrees to repair any and all damage to the Building occasioned by the removal of Raymond's or anyone claiming under Raymond's of any property from the Building.

Raymond's of any property from the Building.

c. Raymond's agrees that it will procure all necessary permits before making any repairs, alterations, other improvements or installations. BRA will cooperate with Raymond's in obtaining such permits.

d. Raymond's agrees to pay promptly when due the entire cost of any work done by Raymond's in the Building, so that the Building shall at all times be free of liens for labor or materials, and Raymond's agrees similarly to pay all amounts due for utilities and other services used by Raymond's in the Building. Raymond's agrees to save harmless and indemnify BRA from any and all injury, loss, claims or damage to any person or property occasioned by or arising out of the doing of any such work or on account of such utilities or services.

e. Raymond's, for itself, and its successors and assigns, agrees that in connection with any maintenance, repair or alteration work or construction of improvements or installations in accordance with the provisions of this agreement:

(i) Raymond's will not discriminate against any employees or applicant for employment because of race, creed, color or national origin. Raymond's will take affirmative action to ensure that applicants are employed and that employees are

treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Raymond's agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by BRA setting forth the provisions of this nondiscrimination clause.

(ii) Raymond's will, in all solicitations or advertisements for employees placed by or on behalf of Raymond's, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(iii) Raymond's will send to each labor union or representative of workers with which Raymond's has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or workers' representative of Raymond's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous

places available to employees and applicants for employment.

(iv) Raymond's will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(v) Raymond's will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to Raymond's books, records, and accounts by the Authority, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vi) In the event of Raymond's noncompliance with the nondiscrimination clauses of this subparagraph or with any of the said rules, regulations, or orders, the agreement may be canceled, terminated, or suspended in whole or in part and Raymond's may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by

rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(vii) Raymond's will include the provisions of subparagraphs (i) through (vii) in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. Raymond's will take such action with respect to any construction contract, subcontract or purchase order as BRA or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event Raymond's becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by BRA or the Department of Housing and Urban Development, Raymond's may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such

provisions in any construction contract, subcontract, or purchase order, as required hereby, the term "Raymond's" shall be changed to "Contractor" and the first three lines of this subparagraph e shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:".

9. If the Building, or any part thereof, shall be damaged or destroyed by fire, the elements, the act of any public authority or other casualty, then Raymond's shall give notice thereof to BRA. Unless BRA promptly thereafter repairs or restores the Building to substantially the same condition it was in immediately prior to the casualty, Raymond's may terminate its use and occupancy of the

Building upon the thirtieth day after Raymond's giving BRA written notice specifying the date of Raymond's vacating the Building. If Raymond's does not elect to terminate its use and occupancy of the Building, Raymond's shall have the right, at its expense except insofar as insurance proceeds or other damages may be available as a result of such casualty, to repair or restore the Building to substantially the same condition it was in immediately prior to the casualty; but BRA shall in no event be responsible for any expenses of such repair or restoration except to the extent of such insurance proceeds or damages received by BRA.

10. BRA and Raymond's have agreed that certain businesses (identified on Schedule II hereto) also displaced from the Project Area may occupy space in the Building. Said businesses shall be subtenants of Raymond's and treated for all purposes and in all respects as if they were departments

or licensees of Raymond's, except that Raymond's shall not discriminate against said businesses and the terms and conditions of use and occupancy of the Building by said businesses shall be subject to, and may not be altered without, BRA's approval.

a. Said businesses occupying the Building by agreement with Raymond's shall pay rent to Raymond's, and their sales shall be included in Raymond's sales for purposes of determining use and occupancy charges as provided in paragraph 6 hereof.

b. BRA further reserves the power to grant to any public or governmental or other non-profit organization the right to use and occupy any portion of the Building which Raymond's is not occupying at that time and does not then have specific plans to occupy at a future time.

c. In the event that during the term of the use and occupancy Raymond's reduces by ten per cent (10%) or more the amount of space in the Building which it is using to offer merchandise for sale to customers, BRA shall be entitled to grant to any other person the right to use and occupy such portions of the Building as Raymond's is not occupying at that time and does not then have specific plans to occupy at a future time.

11. Any person or organization granted the right to use and occupy the Building pursuant to subparagraph 10.b or 10.c hereof and all persons having business with any such person or organization shall have the right to use, in common with Raymond's and all persons having businesses with Raymond's, such doorways, stairs and elevators or escalators as may be necessary to afford access to the space being used by such person or organization; provided, however, that BRA will ensure that reasonable provisions are made to afford Raymond's due protection from any increased security risk or other danger resulting from such use.

a. In the case of an organization granted the right to use and occupy the Building pursuant to subparagraph 10.b, Raymond's shall be entitled to reimbursement for any additional expense of operation of the Building caused by such organization's use.

b. In the event that a business is granted the right to use or occupy the Building pursuant to subparagraph 10.c, Raymond's shall be entitled to reimbursement by such business for either its pro-rata share of the expenses of operation of the Building or any additional expense of such operation caused by the use by such business, whichever is greater.

12. Neither Raymond's nor anyone claiming under Raymond's shall discriminate upon the basis of race, color, creed or national origin in any license, sublease, or other rental or in the use or occupancy of the Building or any part thereof; nor shall Raymond's or any such person effect or execute any agreement, license, sublease or other instrument whereby the Building or any part thereof is restricted upon the basis of race, color, creed or national origin. Raymond's shall comply with all state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, creed or national origin.

13. Raymond's agrees to save BRA harmless from, and indemnify BRA against, any and all injury, loss or damage, of whatever nature, to any person or property caused by or resulting from department store operations of Raymond's or any subtenant, licensee or concessionaire of Raymond's in or around the Building or any act, failure to act, omission or negligence of Raymond's or any subtenant, licensee or concessionaire of Raymond's or any employee or agent of Raymond's or any subtenant, licensee or

concessionaire of Raymond's. It is a condition of this save harmless and indemnification that Raymond's shall receive prompt notice of any claim against BRA. If Raymond's or anyone claiming under Raymond's or the whole or any part of the property of Raymond's or anyone claiming under Raymond's shall be injured, lost or damaged by theft, fire, water or steam or in any other way or manner, whether similar or dissimilar to the foregoing, no part of said injury, loss or damage is to be borne by BRA unless the same shall be caused by or result from the act, failure to act, omission or negligence of BRA or its employees or agents.

14. Raymond's will maintain with respect to the Building throughout the term of the use and occupancy a policy or policies affording public liability insurance in amounts of not less than \$300,000 with respect to injuries to any one person and not less than \$500,000 with respect to injuries suffered in any one accident, and \$100,000 for each occurrence for property damage, and products liability insurance in limits not less than \$300,000 for each person and \$500,000 for each occurrence for personal injury or death.

Such policies of insurance shall be issued by insurance companies authorized to do business in The Commonwealth of Massachusetts, shall name BRA and Raymond's as insureds, and shall provide that they may not be cancelled or materially changed without ten (10) days' prior written notice to each party named as insured therein. Raymond's shall deliver a certificate of such insurance to the BRA.

15. Each of BRA and Raymond's hereby releases the other to the extent of its insurance coverage, from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties, even if such fire or other casualty shall be brought about by the fault or negligence of the other party, or any persons claiming under it; provided, however, that this release shall be in force and effect only with respect to loss or damage occurring during such time as releasor's policies of fire and extended coverage insurance shall contain a clause to the effect that this release shall not affect said policies or the right of the releasor to recover thereunder. Each of BRA and Raymond's agrees that its fire and extended coverage insurance policies will include such a clause so long as the same is obtainable and is includable without extra cost, or if such extra cost is chargeable therefor, so long as the other party pays such extra cost. If extra cost is chargeable therefor, each party will advise the other thereof and of the amount thereof, and

the other party at its election, may pay the same, but shall not be obligated to do so. Except as hereinbefore provided in this paragraph nothing herein contained shall be deemed to release either party hereto from liability for damages resulting from the fault or negligence of said party or its agents.

16. If Raymond's shall default in the payment of any use and occupancy charge due or in the performance or observance of any agreement or condition herein, and if Raymond's shall fail within fourteen days after receipt of notice specifying the default from BRA (which notice shall not be deemed to waive any claim for breach of agreement) to cure such default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence), at BRA's option, without thus waiving any claim for breach of agreement,

a. BRA may thereafter cure such default for the account of Raymond's, and any amount paid by BRA in so doing shall be deemed paid for the account of Raymond's and Raymond's agrees to reimburse BRA therefor; provided that BRA may cure any such default as aforesaid prior to the expiration of fourteen days but after notice to Raymond's, if the curing of such default prior to the expiration of said period is reasonably necessary to protect the Building or

BRA's interest therein or to prevent injury or damage to persons or property; or

b. in the case of non-payment of a use and occupancy charge or in the case of Raymond's failure or refusal to comply with or abide by any rule, order, determination, ordinance or law of any federal, state or municipal authority or any agreement or condition hereof without Raymond's in good faith and by appropriate legal proceedings either contesting the validity thereof or claiming that compliance therewith is the obligation of BRA rather than Raymond's, BRA may send written notice to Raymond's of the termination of the term of the use and occupancy, in which event on the fifth day next following the date of the sending of the notice, the said term shall terminate and thereafter Raymond's may be evicted, if necessary, by warrant pursuant to section 3 of chapter 79 of the General Laws (Ter. Ed.).

17. Except as otherwise specifically provided herein, and unless and until a different signatory or addressee therefor is designated by written notice so given, any notice or other communication required or permitted to be given hereunder by either party to the other shall be sufficient if in writing, signed by the President of Raymond's or the Development Administrator of BRA, and mailed by certified mail addressed to, or delivered in hand to, the said President at the Building or the said Development Administrator at 1103 City Hall Annex, Boston (as the case may be). As used herein, the term "day" or "days" refers to calendar days and "business days" comprise Monday through Friday excluding holidays observed by the Superior Court within and for Suffolk County.

18. The words "herein", "hereof", and "hereunder" refer to this agreement as a whole and not merely to the subdivisions in which such words appear. The word "person" when used herein refers to any firm, partnership, other association or corporation as well as to any natural person. Unless the context does not permit, the neuter gender when used herein shall include the masculine and feminine, the singular shall include the plural and the plural shall include the singular.

19. This instrument shall be interpreted according to the laws of The Commonwealth of Massachusetts and the

following rules:

a. Unless repugnant to the context, the terms "BRA" and "Raymond's" shall refer to all successors and assigns of each of them and all persons claiming under them.

b. Wherever this agreement provides for the doing of any act by any person it is understood and agreed that said act shall be done by such person at its own cost and expense unless a contrary intent is expressed.

c. Failure on the part of either party to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver of any rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof shall be construed as a waiver of any of the other provisions hereunder and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by either party to or of any action by the other requiring such consent or approval shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent similar act. If any term or provision of this instrument or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this instrument, or the application of such term or provision to persons or circumstances other than those

as to which it is held invalid or unenforceable shall not be effected thereby, and each term and provision of this instrument shall be valid and be enforced to the fullest extent permitted by law.

d. This agreement is to take effect as a sealed instrument, and is binding upon and enures to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

20. This agreement is subject to and incorporates paragraphs 13, 14 and 15 of the attached document numbered "H-621B (8-63)" and entitled "Part II - Terms and Conditions"; and, insofar as this agreement constitutes a management agreement, it is subject to and incorporates all other provisions of the said attached document. In the said attached document this agreement is called the "Contract", Raymond's is called the "Contractor" and the BRA is called the "Local Public Agency".

IN WITNESS WHEREOF, the parties hereto have
caused this agreement to be executed in five counterparts
by their respective officers thereunto duly authorized,
as of the day and year first above written.

ATTEST:

RAYMOND'S, INC.

(SEAL)

By

(Title)

ATTEST:

BOSTON REDEVELOPMENT AUTHORITY

(SEAL)

By

(Title)

APPROVED AS TO FORM:

John C. Conley
General Counsel

SCHEDULE I

DESCRIPTION OF PROPERTY

Beginning at the intersection of the east side of Washington Street and the south side of Bedford Street and running southeasterly on a bearing of S 55° 16' 14" E for a distance of 233.47 feet;

Then running southwesterly on a bearing of S 34° 45" 18" W for a distance of 155.80 feet;

Then running northwesterly on a bearing of N 85° 37' 39" W for a distance of 266.54 feet;

Then running northeasterly on a bearing of N 31° 53' 11" E for a distance of 86.08 feet;

Then continuing northeasterly on a bearing of N 34° 20' 52" E for a distance of 117.41 feet; and

Then continuing northeasterly on a bearing of N 35° 48' 52" E for a distance of 87.14 feet to the point of beginning.

SCHEDULE II

OTHER BUSINESSES TO BE ACCOMMODATED IN THE BUILDING

A. The following former licensees of R.H. White Corporation doing business as CityMart shall continue to occupy space in the building as licensees or subtenants of Raymond's:

1. Restaurant, operated by National Food Services, Inc., 518 Washington Street, Boston, Massachusetts.
2. Snack stand, operated by said National Food Services, Inc.
3. Supermarket, operated by Felsab Corp. d/b/a Morses, 1364 Blue Hill Avenue, Mattapan, Massachusetts.
4. Meat market, operated by said Felsab Corp.
5. Bakery, operated by Excel Cake Corp., 594 Dudley Street, Dorchester, Massachusetts.
6. Shoe repair, operated by Paris Shoe Repair.
7. CityMart Beauty Salon, operated by LaStaiti Associates, P.O. Box 2100, New Bedford, Massachusetts.
8. Beauty school, operated by LaBaron Hairdressing Academies, Inc., P.O. Box 2100, New Bedford, Massachusetts.
9. Wig salon, operated by K & K Fur Co., Inc., 518 Washington Street, Boston, Massachusetts.

B. The following independent businesses will be accommodated by Raymond's pursuant to reasonable terms to be agreed upon in accordance with paragraph 10:

1. Charles E. Lauriat Company d/b/a Lauriat's Dennison Store, 65 Franklin Street, Boston, Massachusetts.
2. Stoddard, Inc. d/b/a Stoddard's Cutlery, 374 Washington Street, Boston, Massachusetts.